

CHAPTER 75-03-25 OMBUDSMAN PROGRAM

Section	
75-03-25-01	Definitions
75-03-25-02	Appointment of the State Long-term Care Ombudsman
75-03-25-03	Duties of the State Long-term Care Ombudsman
75-03-25-04	Appointment of the Regional Long-term Care Ombudsman
75-03-25-05	Duties of the Regional Ombudsman
75-03-25-06	Appointment of the Community Ombudsman - Qualifications
75-03-25-07	Duties of the Community Ombudsman
75-03-25-08	Restrictions on Services Offered by Community Ombudsman
75-03-25-09	Reasonable Access to Long-term Care Facility, Residents, and Records
75-03-25-10	Conflict of Interest
75-03-25-11	Dismissal of an Ombudsman
75-03-25-12	Legal Counsel
75-03-25-13	Retaliation Prohibited
75-03-25-14	Resident's Right to Notice
75-03-25-15	Statewide Uniform Reporting System

75-03-25-01. Definitions. As used in this chapter:

1. "Administrative action" means an act, decision, or a failure to act or to make a decision by an owner, employee, or agent of a long-term care facility or by a public agency that affects the provision of services to a resident.
2. "Basic care facility" means any residence, not licensed under North Dakota Century Code chapter 23-16 by the state department of health, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services.
3. "Community ombudsman" means an individual appointed by the department as an ombudsman on the community level as opposed to the regional or state level.
4. "Complaint" means a written or verbal statement of alleged violation of a statute, rule, regulation, or policy, or other alleged wrongful acts or omissions related to health, safety, welfare, personal, or civil rights of a long-term care resident.
5. "Department" means the department of human services.

6. "Designated representative" means a legal representative or any individual chosen by the long-term care resident to represent the long-term care resident.
7. "Immediate family" means an individual whose relationship by blood, marriage, or adoption to an individual is within the second degree of kinship.
8. "Legal representative" means the long-term care resident's legal counsel, an individual who possesses the resident's unlimited power of attorney or power of attorney that specifically includes the authority to release confidential information, a guardian with unlimited power, or a guardian or conservator whose grant of authority specifically includes the authority to release confidential information.
9. "Long-term care facility" means a facility defined in North Dakota Century Code chapter 50-10.1, as any skilled nursing facility, intermediate care facility, basic care facility, nursing home as defined in subsection 3 of North Dakota Century Code section 43-34-01, boardinghouse, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of North Dakota Century Code section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.
10. "Medical record" means a record maintained by a long-term care facility relating to the medical and physical condition, care, and treatment of a particular long-term care resident. The medical record includes social and other information as required by the facility and the resident.
11. "Reasonable access" means the ombudsman's right to access a long-term care facility, a long-term care resident, or a long-term care resident's records, based on the ombudsman's need to know information in the provision of services.
12. "Resident" means an individual residing in and receiving personal care from a long-term care facility.
13. "Second degree of kinship" means an individual whose relationship to another individual by blood, marriage, or adoption is as spouse, sister, brother, mother, father, or aunt, or uncle.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-02. Appointment of the state long-term care ombudsman.

The executive director of the department shall appoint an individual as the state long-term care ombudsman. The state long-term care ombudsman shall serve as

a full-time, classified service employee of the division of aging services and must exhibit expertise and experience in long-term care and advocacy.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-02, 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-03. Duties of the state long-term care ombudsman. The state long-term care ombudsman shall:

1. Identify, investigate, and resolve complaints made by, or on behalf of, long-term care residents;
2. Investigate and resolve complaints involving long-term care service providers, representatives of providers, public agencies, or health and social service agencies or complaints that pertain to administrative action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of a long-term care resident, including the appointment and functions of guardians and representative payees;
3. Provide assistance to a long-term care resident in protecting the resident's health, safety, welfare, or rights;
4. Provide a long-term care resident with information and procedures to protect the long-term care resident's rights and to obtain health, safety, welfare, or rights services from long-term care service providers, public agencies, or health and social service agencies;
5. Develop and monitor the effectiveness of complaint registration and complaint resolution mechanisms that provide a long-term care resident regular and timely access to ombudsman services;
6. Represent the interests of a long-term care resident before governmental agencies;
7. Seek administrative and legal remedies to protect the health, safety, welfare, or rights of a long-term care resident;
8. Research, evaluate, comment on, and monitor the development and implementation of federal, state, and local laws, administrative rules, regulations, and other federal, state, and local policies and actions, pertaining to the health, safety, welfare, and rights of a long-term care resident;
9. Recommend changes and facilitate public comments on laws, rules, regulations, policies, actions, and decisions pertaining to the health, safety, welfare, and rights of a long-term care resident;

10. Provide training for the regional and community ombudsman and train volunteers and encourage the development of citizen organizations to take part in the ombudsman proram;
11. Provide technical assistance for the development of a long-term care resident council and a resident's family council for the protection of a long-term care resident's well-being and rights; and
12. Perform other operations and projects required by federal and state aging services.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-04. Appointment of the regional long-term care ombudsman.

The executive director of the department, through the director of aging services, shall designate an individual in each region to serve as the regional long-term care ombudsman. The individual designated as the regional long-term care ombudsman shall have demonstrated capability to carry out the responsibilities of the office, be free of conflicts of interest, and meet such additional requirements as the director of aging services may specify.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-02, 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-05. Duties of the regional ombudsman. The regional ombudsman shall:

1. Investigate and resolve complaints involving long-term care service providers, or representatives of providers, public agencies, or health and social service agencies and pertaining to administrative action, inaction, or decisions that may adversely affect the health, safety, welfare, or rights of a long-term care resident;
2. Ensure that a long-term care resident in the regional ombudsman's service area has regular, reliable, and timely access to the regional and community ombudsman;
3. Ensure that complaints and requests for assistance receive timely responses;
4. Represent the interests of a long-term care resident before governmental agencies and pursue administrative and legal remedies, to protect the health, safety, welfare, and rights of a long-term care resident;

5. Review and make necessary comments on existing and proposed statutes, rules, regulations, and other governmental policies and administrative actions pertaining to the health, safety, welfare, and rights of a long-term care resident;
6. Facilitate the opportunity for the public to comment on federal and state statutes, rules, regulations, policies, and administrative actions pertaining to the health, safety, welfare, and rights of a long-term care resident.
7. Advocate for and support the development of a long-term care resident and a long-term care resident's family council;
8. Recruit and select the community ombudsman, maintain documentation of training, and investigate any complaints about the community ombudsman, in the form and manner required by the department;
9. Conduct an annual evaluation of each community ombudsman in the form and manner required by the department; and
10. Perform other operations and projects required by the state long-term care ombudsman.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-06. Appointment of the community ombudsman - Qualifications. With the approval of the director of aging services, the regional long-term ombudsman may designate a community ombudsman. If the community ombudsman is an individual, the individual must be at least age eighteen. If the community ombudsman is an organization, the organization must be a public or nonprofit private organization. The community ombudsman is not paid and is not an employee of the department. Each designated community ombudsman shall:

1. Have references and experiences that demonstrate the capability to fulfill comparable duties as listed in section 75-03-25-07;
2. Be free of conflicts of interest;
3. Possess any other qualifications that the state and regional long-term care ombudsman regard necessary to fulfill the duties of the position;
4. Have completed initial and ongoing training;
5. Have agreed to abide by the confidentiality statement, the conflict of interest statement, and the job description;
6. Be able to communicate with long-term care residents and facility staff;

7. Be able to communicate with residents who may be physically or mentally impaired; and
8. Understand and have the ability to advocate on behalf of residents.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-07. Duties of the community ombudsman. The community ombudsman shall:

1. Provide ombudsman services to protect the health, safety, welfare, and rights of a long-term care resident;
2. Be present at the ombudsman's assigned facility on a regular basis;
3. Maintain confidentiality in all ombudsman activities;
4. Receive and report concerns, issues, and complaints to the regional ombudsman; and
5. Assist the regional ombudsman with assessment, complaint resolution, and follow-up activities.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-08. Restrictions on services offered by community ombudsman. While in the role of the community ombudsman in an assigned long-term care facility, the community ombudsman shall not:

1. Provide direct personal care to a long-term care resident;
2. Provide transportation for a long-term care resident; or
3. Conduct personal business for a long-term care resident.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-09. Reasonable access to long-term care facility, residents, and records. The division of aging services shall ensure that the state, regional, and community ombudsmen have reasonable access to:

1. A long-term care facility and a long-term care resident;

2. Review a long-term care resident's medical records, as necessary to resolve a complaint, if the resident or the resident's legal representative gives written permission;
3. Review a long-term care resident's medical record if a court orders disclosure;
4. Open administrative records, policies, and documents of a long-term care facility; and
5. State licensure and certification records regarding long-term care facilities.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-10. Conflict of interest.

1. In the ombudsman's official capacity and in the performance of the ombudsman's official duties, an ombudsman may not serve in any protective custody capacity for a long-term care resident, unless the long-term care resident is not in a facility served by the ombudsman.
2. a. Any ombudsman or any member of the ombudsman's immediate family may not be a board member, have an ownership interest, or be employed in the long-term care facility in which the community ombudsman is assigned.

b. If a public or nonprofit organization provides ombudsman services, an officer of the entity or any member of the officer's immediate family may not be a board member, have an ownership interest, or be employed in the long-term care facility in which the entity serves as the community ombudsman.
3. An ombudsman may not have the responsibility for licensure or certification of any long-term care facility.
4. An ombudsman may not receive or have the right to receive, directly or indirectly, any remuneration, in cash or in kind, under a compensation arrangement with an owner or operator of a long-term care facility.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-11. Dismissal of an ombudsman. Any ombudsman may be dismissed if the ombudsman:

1. Fails to perform ombudsman services in a manner consistent with the program's policies and procedures;
2. Fails to maintain confidentiality;
3. Fails to report abuse, neglect, or exploitation of a long-term care resident with or without the victim's name in accordance with the victim's preference; or. Communicates a known false statement.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-12. Legal counsel. Legal counsel shall be provided to any ombudsman against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official ombudsman duties.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8)

75-03-25-13. Retaliation prohibited. A long-term care facility, and its agents, may not take or threaten retaliatory action against a long-term care resident, an employee, or any other individual because of the filing of a complaint by or on behalf of the long-term care resident, or because of the provision of information to a long-term care ombudsman constituting or relating to a complaint. Examples of retaliatory actions include:

1. The discharge from or termination of employment;
2. The demotion, negative work performance evaluation, reduction of hours worked, reduction of benefits or work privileges, or reduction in remuneration for services of the employee; or
3. The restriction or prohibition of access by the employee to any place of employment or to individuals affiliated with the place of employment.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8), 50-10.1-05

75-03-25-14. Resident's right to notice. The long-term care facility shall post, in a conspicuous place in each long-term care facility, a copy of North Dakota Century Code chapter 50-10.1, a statement of the right to file a complaint concerning administrative actions which affect any long-term care resident, and the address where a complaint may be filed. The long-term care facility shall provide copies of the posted information to each long-term care resident, the long-term care resident's spouse, and any designated representative of a long-term care

resident at the time the long-term care resident is admitted to the long-term care facility.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8), 50-10.1-05

75-03-25-15. Statewide uniform reporting system.

1. The department shall establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities.
2. The department shall conduct the following actions through the statewide uniform reporting system:
 - a. Maintain and publicize the availability of a statewide toll-free telephone number for the reporting of complaints regarding long-term care issues;
 - b. Coordinate the receipt, investigation, referral, and resolution of complaints;
 - c. Maintain statistical information;
 - d. Compile and mail a statistical report to other agencies as required;
 - e. Gather and disseminate information regarding issues facing long-term care facilities;
 - f. Assist in the development of administrative and legislative proposals for improving the quality of life and care of a long-term care resident of a long-term care facility; and
 - g. File an annual report that includes a summary of cases, information and referral requests, and long-term care issues.
3. No information maintained in the statewide uniform reporting system shall be disclosed for the purpose of rating or comparing services provided by individual long-term care facilities.

History: Effective March 1, 1997.

General Authority: NDCC 50-10.1-03(8); 42 U.S.C. 3011, et seq.

Law Implemented: NDCC 50-10.1-03(8), 50-10.1-06